Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1978

No. 78-479

STANLEY D. EDMONDS,

Petitioner,

v.

COMPAGNIE GENERALE TRANSATLANTIQUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI

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I.

Respondent shipowner believes that the opinion of the United States Court of Appeals for the Fourth Circuit rendered on June 22, 1978 was correct and is based on a proper interpretation of the 1972 Amendments of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and prior decisions of this Court. However, since the issues involved in this case are of considerable importance to the maritime industry, respondent feels that the Petition for a Writ of Certiorari should be granted so as to

permit a definitive ruling by this Court with regard to the important issues raised in this case, thus establishing a uniform rule to be applied in similar cases throughout the country.

II.

REASONS FOR GRANTING THE WRIT

A. Conflict Among The Circuits.

Respondent agrees with Petitioner that there is a clear conflict among the Circuits on the question of whether a shipowner is only responsible for that portion of the total damages attributable to its fault or whether it must pay the total amount of the damages, even that part caused by negligence of an injured longshoreman's stevedore employer. The Fourth Circuit has held, respondent feels correctly, that fault must be apportioned and that a shipowner is only responsible for that portion of the damages caused by its negligence, while the Ninth and Fifth Circuits have refused to apportion fault between shipowner and employer. *Shellman* v. *U. S. Lines, Inc.*, 528 F (2d) 675 (9th Cir. 1975), cert. denied, 425 U. S. 936 (1976); *Samuels* v. *Empresa Lineas Maritimas Argentinas*, 573 F (2d) 884 (5th Cir. 1978).

While respondent recognizes this conflict among the Circuits, it should be pointed out that the decision of the Fourth Circuit in *Edmonds* is not the first time such an apportionment has been granted. In a non-maritime case, the District of Columbia Circuit held in 1968 that an injured employee's damages would be reduced by one-half because his workman's compensation paying employer was concurrently negligent. *Murray* v. *United States*, 405 F (2d) 1361 (D.C. Cir. 1968). While *Murray* involved an interpretation of the Federal Employees Compensation Act (FECA), 5 U.S.C. § 8101 et seq., this ruling was later extended in *Dawson* v. *Contractors Transport Corp.*, 467 F (2d) 727 (D.C. Cir. 1972), to an action in which the plaintiff was covered by the Longshoremen's and Harbor Workers' Compensation Act.[1]

In addition, the Third Circuit, in the case of *Marant* v. *Farrell Lines, Inc.*, 550 F (2d) 142 (3rd Cir. 1977), reviewed the cases that had to that time dealt with the "equitable credit" theory, including *Murray* and *Dawson*, discussed the various cases in some detail and concluded that in light of the Supreme Court's attitude in maritime matters as demonstrated in *United States* v. *Reliable Transfer Co., Inc.*, 421 U. S. 397 (1975), the question of a possible credit to the vessel in cases of concurrent stevedore-vessel negligence was very much an open question. The majority opinion in *Marant* seems to indicate that the Third Circuit, if faced squarely with the question, would follow the lead of the Fourth Circuit in the present case and hold a shipowner responsible only for that portion of the damages caused by the shipowner's fault.

Thus, it is obvious that under the present state of the law, an injured longshoreman's remedy, and the shipowner's potential liability, will be governed according to the port in which the accident occurred and not uniformly throughout the country. Respondent conducts operations in various ports of the East Coast of the United States and its operations will be subject to varying rules if this Court does not grant Certiorari to resolve the conflict among the Courts. We submit that this Court should resolve the conflict by adopting the view of the Fourth Circuit.

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[1] Since 1928, the Longshoremen's and Harbor Workers' Compensation Act has been utilized as the compensation law for all non-governmental employees working in the District of Columbia.

B. Conflict With Prior Decisions Of This Court.

The Fourth Circuit, in its en banc decision, cited *Reliable Transfer* as its authority for apportioning fault between the shipowner and a concurrently negligent stevedore and contrary to petitioner's view we feel that such a holding is not in direct conflict with this Court's earlier decisions in *Halcyon Lines* v. *Haenn Ship Ceiling and Refitting Corp.*, 342 U. S. 282 (1952) and *Pope & Talbot Inc.* v. *Hawn*, 346 U.S. 406 (1953). However, we recognize that several courts, including the Ninth Circuit in *Shellman*, feel that *Halcyon* and *Hawn* preclude the adoption of a system of proportionate fault in a situation where shipowner and stevedore—employer are concurrently at fault. This Court should therefore grant Certiorari to resolve this apparent conflict and provide clear direction to the lower courts as to the continued viability of *Halcyon* and *Hawn*.

III.

CONCLUSION

Although respondent strongly believes that the Fourth Circuit was correct in ruling that a shipowner's liability to an injured longshoreman is limited to its percentage of fault, it nevertheless submits that this case involves an important question of Federal law which should be reviewed and decided by this Court and made uniform throughout all jurisdictions.

Respectfully Submitted,

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